PATTERN JURY INSTRUCTIONS

for CIVIL PRACTICE

in the SUPERIOR COURT of the STATE of DELAWARE

2000 EDITION

Revised in part 8/15/2006

[Cite as: DEL. P.J.I. CIV. § xx.xx (2000).]

Disclaimer: The following civil jury instructions were compiled as a reference guide for the benefit of practitioners in Superior Court. The instructions are merely advisory and the practitioner should not use these instructions without also reviewing the applicable statutes, court rules, and case law. While the Review Committee has made every effort to conform these instructions to the prevailing law, they are always subject to review by the Supreme Court. For further discussion of these instructions and their relation to applicable standards of appellate review, see *Russell v. K-Mart Corp.*, 761 A.2d 1, 4 (Del. 2000).

WILLFUL AND WANTON CONDUCT DEFINED

Willfulness indicates an intent, or a conscious decision, to disregard the rights of others. Willfulness is a conscious choice to ignore consequences when it is reasonably apparent that someone will probably be harmed.

Wanton conduct occurs when a person, though not intending to cause harm, does something so unreasonable and so dangerous that the person either knows or should know that harm will probably result. It reflects a foolhardy "I don't care" attitude.

Source:

Koutoufaris v. Dick, 604 A.2d 390, 399 (Del. 1992)(a person acts in a wanton manner when aware of and consciously disregarding a substantial and unjustifiable risk to another's rights or safety); *Furek v. University of Delaware*, 594 A.2d 506, 523 (Del. 1991)(university response to hazing, though ineffectual, was not conscious disregard of known risk); *Jardel Co. v. Hughes*, 523 A.2d 518, 529-30 (Del. 1987)(involves an awareness of one's conduct and a realization of its probable consequences); *Eustice v. Rupert*, 460 A.2d 507, 509-11 (Del. 1983)(must reflect a conscious indifference or 'I-don't-care' attitude); *Yankanwich v. Wharton*, 460 A.2d 1326, 1331 (Del. 1983)(driving fast in icy conditions reflects conduct so unreasonable and dangerous that the person "either knows or should know that there is an eminent likelihood of harm which can result"); *Wagner v. Shanks*, 194 A.2d 701 (Del. 1963)(wanton conduct exhibits a conscious indifference to consequences in circumstances where probability of harm to another is reasonably apparent, although harm to such other is not intended); *Sadler v. New Castle County*, 524 A.2d 18 (Del. Super. Ct. 1987), *aff'd*, 565 A.2d 917 (Del. 1987); *Boughton v. Division of Unemployment Ins. of Dep't of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972)(wanton conduct is heedless, malicious or reckless, but does not require actual intent to cause harm; while willful implies actual, specific or evil intent); *Creed v. Hartley*, 199 A.2d 113 (Del. Super. Ct. 1962), *aff'd*, 196 A.3d 224 (Del. 1963).

7. HEALTHCARE - MEDICAL NEGLIGENCE

DEFINITION OF MEDICAL NEGLIGENCE

A healthcare provider that does not meet the applicable standard of care commits medical negligence. The law requires that:

> The standard of skill and care required of every healthcare provider in rendering professional services or healthcare to a patient shall be that degree of skill and care ordinarily employed, in the same or similar field of medicine as [the] defendant, and the use of reasonable care and diligence.

The law requires that a [__doctor, nurse, etc.__]'s conduct be judged by the degree of care, skill, and diligence exercised by [__doctors, nurses, etc.__] of the same or similar medical specialty, practicing at the time when the alleged medical negligence occurred.

On the one hand, if you find that [***defendant's name***] failed to meet this standard and that this failure was a proximate cause of some injury to [***plaintiff's name***], then your verdict must be for [***plaintiff's name***]. (I shall explain what "proximate cause" means in a moment.) On the other hand, if [***defendant's name***] did meet this standard, then your verdict must be against [***plaintiff's name***].

Each [__doctor, nurse, etc.__] and healthcare provider is held to the standard of care and knowledge commonly possessed by members in good standing of his or her profession and specialty. It is not the standard of care of the most highly skilled, nor is it necessarily that of average members of this profession, since those who have somewhat less than average skills may still possess the degree of skill and care to treat patients competently. When a [__doctor, nurse, etc.__] chooses between appropriate alternative medical treatments, harm resulting from a [__doctor, nurse, etc.__]'s good-faith choice of one proper alternative over the other is not medical negligence. [***Plaintiff's name***] cannot prove that [***defendant's name***] committed medical negligence merely by showing that another healthcare provider would have acted differently from [***defendant's name***].

Delaware law further requires that to prove liability, [***plaintiff's name***] must present "expert medical testimony" showing that "the alleged deviation from the applicable standard of care" caused the injury. You may not guess about the standard of care that applies to [***defendant's name***], or whether a departure from that standard injured [***plaintiff's name***]. You must consider only expert testimony, when you determine the

applicable standard, decide whether it was met, and -- if it wasn't -- determine what caused [***plaintiff's name***]'s injury. If the expert witnesses have disagreed on the applicable standard of care, on whether it was met, or on the question of cause, you must decide which view is correct.

No presumption of medical negligence arises from the mere fact that the patient's treatment had an undesirable result. Medical negligence is never presumed. The fact that a patient has suffered injury while in the care of a healthcare provider does not mean that the healthcare provider committed medical negligence.

{**Comment**: The change in the locality requirement of DEL. CODE ANN. tit. 18, § 6801(7) (1999) is substantive in nature and may not be applied retroactively to claims of malpractice allegedly arising before July 7, 1998.}

Source:

DEL. CODE ANN. tit. 18, §§ 6801(7), 6852, 6853, 6854 (1999); *Froio v. du Pont Hospital for Children*, 816 A.2d 784, 786-87 (Del. 2003); *Corbitt v. Tatgari*, 804 A.2d 1057, 1062-64 (Del. 2002); *Green v. Weiner*, 766 A.2d 492, 494-95 (Del. 2001); *Balan v. Horner*, 706 A.2d 518, 520-21 (Del. 1998)(noting physicians with different specialties may share concerns about the diagnosis and treatment of a common medical condition, and where there are concurrent fields of expertise, a common standard of care may be shared); *McKenzie v. Blasetto*, 686 A.2d 160, 163 (Del. 1996)(application of a national standard of care may be used when that standard is found to be the same as the relevant Delaware standard); *Medical Ctr. of Delaware v. Lougheed*, 661 A.2d 1055, 1057-59 (Del. 1995); *Greco v. University of Delaware*, 619 A.2d 900, 903-04 (Del. 1993); *Baldwin v. Benge*, 606 A.2d 64, 68 (Del. 1992); *Riggins v. Mauriello*, 603 A.2d 827, 829-31 (Del. 1992); *Register v. Wilmington Med. Ctr.*, 377 A.2d 8, 10 (Del. 1977); *Colemen v. Garrison*, 349 A.2d 8, 10 (Del. 1975); *DiFillippo v. Preston,* 173 A.2d 333, 336-37 (Del. 1961); *cf. Peters v. Gelb*, 314 A.2d 901, 903-04 (Del. 1973)(expert witness who remained in good professional standing but had not actually practiced the particular procedure upon which his opinion was sought could be found by the court as not qualified to testify as an expert).

Sostre v. Swift, 603 A.2d 809, 812 (Del. 1992); *Burhart v. Davies*, 602 A.2d 56, 59-60 (Del. 1991), *cert. denied*, 112 S. Ct. 1946, 118 L.Ed.2d 551 (1992); *Russell v. Kanaga*, 571 A.2d 724, 732 (Del. 1990); *Loftus v. Hayden*, 391 A.2d 749 (Del. 1978); *Ewing v. Beck*, 520 A.2d 653 (Del. 1987); *Tyler v. Dworkin*, 747 A.2d 111, 124 (Del. Super. Ct. 1999), *aff'd*, 741 A.2d 1028 (Del. 1999) (ORDER); *Larrimore v. Homeopathic Hosp. Ass'n of Delaware*, 176 A.2d 362, 367-68 (Del. Super. Ct. 1961), *aff'd*, 181 A.2d 573, 576-77 (Del. 1962)(standard of care

for nurses, as for physicians, is a matter of applying the appropriate standard required of the nursing profession in the given circumstances).

7. HEALTHCARE - MALPRACTICE

OPINION OF MEDICAL MALPRACTICE REVIEW PANEL

Aspects of this case were first presented to a Medical Malpractice Review Panel, which rendered a written opinion. That opinion has been read to you and is evidence that [***defendant's name***] [__did / did not__] comply with the appropriate standard of care and that [***defendant's name***]'s conduct [__was / was not__] a factor in the resulting injuries.

You must determine whether [***plaintiff / defendant's name***] has effectively countered the panel's opinion and whether, in light of all the evidence presented by [***defendant's name***], [***plaintiff's name***] has met [***his/her***] burden of establishing by a preponderance of the evidence that there was malpractice and that this malpractice was a proximate cause of [***plaintiff's name***]'s injuries.

Source:

DEL. CODE ANN. tit. 18, §§ 6812, 6853 (1999); *Atamian v. Gorkin*, 2000 Del. LEXIS 15, at *8 (Del. Jan. 18, 2000); *Sostre v. Swift*, 603 A.2d 809, 812 (Del. 1992); *Russell v. Kanaga*, 571 A.2d 724, 728-30 (Del. 1990); *Robinson v. Mroz*, 433 A.2d 1051 (Del. Super. Ct. 1981).

ATTORNEY MALPRACTICE

An attorney has the duty to possess and exercise the degree of learning and skill ordinarily held by an attorney practicing in this community under the similar circumstances. A failure by [***defendant's name***] to conform to this duty is negligence and constitutes what is known as legal malpractice. [***Plaintiff's name***] must prove by a preponderance of the evidence that:

1) an attorney-client relationship existed between [***defendant's name***] and [***plaintiff's name***];

2) [***defendant's name***] negligently [__describe duty__]; and

3) such negligence proximately caused a loss to [***plaintiff's name***].

If you find that [***plaintiff's name***] has failed to prove any one of these elements, then you must find for [***defendant's name***].

Source:

Oropeza v. Maurer, 2004 Del. LEXIS 415, at *3 (Del. Sept. 20, 2004) (ORDER)(three-year statute of limitations applies to legal malpractice); *Jackson v. Lobue*, 2001 Del. LEXIS 432, at *2 (Del. Oct. 15, 2001) (ORDER); *Evans v. State of Delaware*, 2000 Del. LEXIS 528, at *6 (Del. Nov. 15, 2000) (ORDER)(standards for proving ineffective assistance of counsel in criminal proceeding are equivalent to standards for proving legal malpractice in civil proceeding); *Brett v. Berkowitz*, 706 A.2d 509, 517-18 (Del. 1998)(holding out-of-state expert must be "well acquainted and thoroughly conversant" with standard of care required of attorneys in the State of Delaware); *Sanders v. Malik*, 711 A.2d 32, 34 (Del. 1998); *Thompson v. D'Angelo*, 320 A.2d 729, 734 (Del. 1974); *Vredenburgh v. Jones*, 349 A.2d 22, 38-40 (Del. Ch. 1975)(self-dealing by fiduciary); *Began v. Dixon*, 547 A.2d 620, 623 (Del. Super. Ct. 1988)(three-year statute of limitations); *Pusey v. Reed*, 258 A.2d 460, 461 (Del. Super. Ct. 1969).

8. PROFESSIONAL NEGLIGENCE (NON-MEDICAL)

ARCHITECT MALPRACTICE

An architect is bound to perform with reasonable care the duties for which [***he/she***] contracts. [***His/Her***] client has the right to regard [***him/her***] as skilled in the science of the construction of buildings, and to expect that [***he/she***] will use reasonable and ordinary care and diligence in the application of [***his/her***] professional knowledge to accomplish the purpose for which [***he/she***] is retained.

While [***he/she***] does not guarantee a perfect plan or a satisfactory result, he does by [***his/her***] contract imply that [***he/she***] enjoys ordinary skill and ability in [***his/her***] profession and that [***he/she***] will exercise these attributes without neglect and with a certain exactness of performance to effectuate work properly done.

Source:

Seiler v. Levitz Furniture Co. of the Eastern Region, Inc., 367 A.2d 999, 1007-08 (Del. 1976); *Kaplan v. Jackson*, 1994 Del. Super. LEXIS 27, at *5 (Del. Super. Ct. Jan. 20, 1994).

8. PROFESSIONAL NEGLIGENCE (NON-MEDICAL)

PROFESSIONAL MALPRACTICE

A [***identify profession***] has the duty to possess and exercise ordinary care and diligence in the application of [***his/her***] professional knowledge. A failure by [***defendant's name***] to conform to this duty is negligence. [***Plaintiff's name***] must prove by a preponderance of the evidence that:

1) a professional relationship existed between [***defendant's name***] and [***plaintiff's name***];

2) [***defendant's name***] negligently [__describe professional service__]; and

3) such negligence proximately caused a loss to [***plaintiff's name***].

If you find that [***plaintiff's name***] has failed to prove any one of these elements, then you must find for [***defendant's name***].

Source:

Coleman v. PricewaterhouseCoopers, LLC, 854 A.2d 838, 842 (Del. 2004)(accountant malpractice); *Moss Rehab v. White*, 692 A.2d 902, 905-09 (Del. 1997)(educational malpractice not cognizable); *Isaacson, Stolper & Co. v. Artisan's Savings Bank*, 330 A.2d 130, 132 (Del. 1974)(accountant malpractice).

10. SPECIAL DOCTRINES OF TORT LAW

DOMESTIC ANIMAL WITH DANGEROUS PROPENSITIES

In this case, [***plaintiff's name***] has alleged that [***he/she***] was injured when [***defendant's name***]'s [__type of domestic animal__] [__attacked, bit, scratched, etc.__] [***him/her***].

The owner of an animal that isn't normally dangerous is not liable for injury caused by the animal, unless the owner knew that the animal was dangerous to others.

When a person keeps a domestic animal, and that person knows or should know that the animal has a dangerous trait that other animals of the same breed don't have and fails to keep the animal secure, that person is liable for any physical harm done by the animal if the harm results from the dangerous trait.

It is enough to establish the owner's knowledge of the animal's dangerous traits if the owner knows, or reasonably should know, that the animal is inclined to injure people. To find a dangerous trait, it is not necessary to find that the animal had previously attacked or bitten another person.

{Comment: *This instruction does not apply to dogs. See § 10.19.***}**

Source:

Kirshner v. Wilmington Housing Auth., 1997 Del. LEXIS 317, at *3 (Del. Sept. 11, 1997)(liability of landlord with knowledge of animal's dangerous propensity); *Smith v. Isaacs*, 1999 Del. Super. LEXIS 467, at *16 (Del. Super. Ct. Sept. 21, 1999); *Richmond v. Knowles*, 265 A.2d 53, 55 (Del. Super. Ct. 1970); *Duffy v. Gebhart*, 157 A.2d 585, 586 (Del. Super. Ct. 1960); *F. Giovannozzi & Sons v. Luciani*, 18 A.2d 435 (Del. Super. Ct. 1941).

10. SPECIAL DOCTRINES OF TORT LAW

DOG BITE

The owner of a dog that causes [***injury/death/loss***] to person or property is liable in damages, unless the [***injury/death/loss***] occurred when [***plaintiff's name***] was:

{*Include applicable defense:*}

Committing or attempting to commit a trespass or other criminal offense on the owner's property; or

Committing or attempting to commit a criminal offense against any person; or

Teasing, tormenting or abusing the dog.

{**Comment**: *The dog bite statute supersedes the premises guest statute as to the potential liability of a property owner for dog bite injury*.}

Source:

DEL. CODE ANN. tit. 7, § 1711; *McCormick v. Hoddinott*, 865 A.2d 523, 527 (Del. Super. Ct. 2004); *Bemiller v. Rodriguez*, 2000 Del. Super. LEXIS 363, at *4-7 (Del. Super. Ct. Aug. 21, 2000)(dog owners are strictly liable for injuries caused by their dog).

Superseded cases:

Weinbrum v. Montag, Del. Super., C.A. No. 93C-03-089, Bifferato, R.J. (Nov. 6, 1995); *Richmond v. Knowles*, 265 A.2d 53, 55 (Del. Super. Ct. 1970); *F. Giovannozzi & Sons v. Luciani*, 18 A.2d 435 (Del. Super. Ct. 1941); *Duffy v. Gebhart*, 157 A.2d 585, 586 (Del. Super. Ct. 1960).

19. CONTRACTS

PERFORMANCE

Performance is the successful completion of a contractual duty. Full performance consistent with the terms of the agreement discharges the contractual duty. Full performance means not only performance of the character, quality and amount required, but also performance within the agreed time.

Source:

See, e.g., DeMarie v. Neff, 2005 Del. Ch. LEXIS 5, at *15 (Del. Ch. Jan.12, 2005); *Rodgers v. Air-Crane Co., L.L.C.*, 2000 Del. Super. LEXIS 259, at *22 (Del. Super. Ct. Aug. 17, 2000). RESTATEMENT (SECOND) OF CONTRACTS § 235 (1981); Arthur L. Corbin, *Corbin on Contracts* § 67.3 (2005).

DEFAMATION - PUNITIVE DAMAGES -- MEDIA DEFENDANT

For [***plaintiff's name***] to recover punitive damages, you must find that [***defendant's name***] acted with "actual malice." A publication is made with actual malice if it is made with knowledge that it is false or with reckless disregard of whether or not it is false.

If you find that [***plaintiff's name***] has established the essential elements of [***his/her/its***] claim, and if you also find, on the basis of clear and convincing evidence, that [***defendant's name***] acted with actual malice in publishing the defamatory statement in question, then you may award [***plaintiff's name***] punitive damages in addition to actual damages. Punitive damages are designed to punish the offender and serve as an example to others. You must decide whether to award punitive damages and, if so, how much to award.

In making this decision, you must consider the reprehensibility or outrageousness of [***defendant's name***]'s conduct and the amount of punitive damages that will deter [***defendant's name***] and others like [***him/her/it***] from similar conduct in the future. You may consider [***defendant's name***]'s financial condition for that purpose only. Any award of punitive damages must bear a reasonable relationship to [***plaintiff's name***]'s compensatory damages.

If you find that [***plaintiff's name***] is entitled to punitive damages, you must state the amount of punitive damages separately on the special-verdict form.

{**Comment**: *If the defendant is not an entity of the media, the burden of proof on the plaintiff is by a preponderance of the evidence, instead of clear and convincing evidence.*}

Source:

Kanaga v. Gannett Co., Inc., 750 A.2d 1174, 1189-90 (Del. 2000); *Gannett Co. v. Re*, 496 A.2d 553, 558 (Del. 1985); *Sheeren v. Colpo*, 460 A.2d 522, 524-25 (Del. 1983); *Stidham v. Wachtel*, 21 A.2d 282, 283 (Del. Super. Ct. 1941).

22. DAMAGES

DAMAGES -- BREACH OF CONTRACT -- GENERAL

If you find that one party committed a breach of contract, the other party is entitled to compensation in an amount that will place it in the same position it would have been in if the contract had been properly performed. The measure of damages is the loss actually sustained as a result of the breach of the contract.

DAMAGES -- BREACH OF CONTRACT -- GENERAL/NOMINAL

A party that is harmed by a breach of contract is entitled to damages in an amount calculated to compensate [***him/her/it***] for the harm caused by the breach. The compensation should place the injured party in the same position [***him/her/it***] would have been in if the contract had been performed.

If you find that [***plaintiff's name***] is entitled to a verdict in accordance with these instructions, but do not find that [***plaintiff's name***] has sustained actual damages, then you may return a verdict for [***plaintiff's name***] in some nominal sum such as one dollar. Nominal damages are not given as an equivalent for the wrong but rather merely in recognition of a technical injury and by way of declaring the rights of [***plaintiff's name***].

{**Comment**: Punitive damages are not recoverable for breach of contract unless the conduct also amounts independently to a tort. An exception has been permitted in the insurance "bad faith" context. *Pierce v. International Ins. Co. of Ill.*, 671 A.2d 1361, 1367 (Del. 1996).}

Source:

E.I. DuPont de Nemours and Co. v. Pressman, 679 A.2d 436, 446 (Del. 1996); *Pierce v. Int'l Insurance Co. of Illinois*, 671 A.2d 1361, 1367 (Del. 1996); *Oliver B. Cannon & Son, Inc. v. Dorr-Oliver, Inc.*, 394 A.2d 1160, 1163-64 (Del. 1978)(loss of profits); *American General Corp. v. Continental Airlines*, 622 A.2d 1, 11 (Del. Ch. 1992), *aff'd*, 620 A.2d 856 (Del. 1992); *Farny v. Bestfield Builders, Inc.*, 391 A.2d 212, 214 (Del. Super. Ct. 1978); *Gutheridge v. Pen-Mod, Inc.*, 239 A.2d 709, 714 (Del. Super Ct. 1967)(nominal damages); *J.J. White, Inc. v. Metropolitan Merchandise Mart*, 107 A.2d 892, 894 (Del. Super. Ct. 1954).

22. DAMAGES

PUNITIVE DAMAGES

If you decide to award compensatory damages to [***plaintiff's name***], you must determine whether [***defendant's name***] is also liable to [***plaintiff's name***] for punitive damages.

Punitive damages are different from compensatory damages. Compensatory damages are awarded to compensate the plaintiff for the injury suffered. Punitive damages, on the other hand, are awarded in addition to compensatory damages.

You may award punitive damages to punish a party for outrageous conduct and to deter a party, and others like [***him/her/it***], from engaging in similar conduct in the future. To award punitive damages, you must find by a preponderance of the evidence that [***defendant's name***] acted [***intentionally/recklessly***]. Punitive damages cannot be awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence.

Intentional conduct means it is the person's conscious object to engage in conduct of that nature. Reckless conduct is a conscious indifference that amounts to an "I don't care" attitude. Reckless conduct occurs when a person, with no intent to cause harm, performs an act so unreasonable and dangerous that [***he/she/it***] knows or should know that there is an eminent likelihood of harm that can result. Each requires that the defendant foresee that [***his/her/its***] conduct threatens a particular harm to another.

The law provides no fixed standards for the amount of punitive damages.

In determining any award of punitive damages, you may consider the nature of [***defendant's name***]'s conduct and the degree to which the conduct was reprehensible. Finally, you may assess an amount of damages that will deter [***defendant's name***] and others like [***him/her/it***] from similar conduct in the future. You may consider [***defendant's name***]'s financial condition when evaluating deterrence. Any award of punitive damages must bear a reasonable relationship to [***plaintiff's name***]'s compensatory damages. If you find that [***plaintiff's name***] is entitled to an award of punitive damages, state the amount of punitive damages separately on the verdict form.

{**Comment:** Generally the jury will decide liability and compensatory damages before hearing evidence on assets and being instructed on punitive damages. If both compensatory and punitive damages go to the jury at the same time, the jury should also be instructed:

[***Defendant's name***]'s financial condition must not be considered in assessing compensatory damages.}

Source:

State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408 (2003); *BMW of North American, Inc. v. Gore*, 517 U.S. 559, 575 (1996); *Wilhelm v. Ryan*, 2006 Del. LEXIS 399, at *13-14 (Del. Jul. 18, 2006)(civil jury may consider criminal punishment in determining punitive damages); *Gannett Co. v. Kanaga*, 750 A.2d 1174, 1190 (Del. 2000); *Devaney v. Nationwide Mut. Auto Ins. Co.*, 679 A.2d 71, 76-77 (Del. 1996); *Tackett v. State Farm Fire and Cas. Ins. Co.*, 653 A.2d 254, 265-66 (Del. 1995)(punitive damages available in bad faith action if breach is particularly egregious); *Jardel Co. v. Hughes*, 523 A.2d 518, 527-31 (Del. 1987); *Jones v. Del. Cmty. Corp. for Individual Dignity*, 2004 Del. Super. LEXIS 133, at *14-15, *aff'd*, *Del. Cmty. Corp. for Individual Dignity v. Jones*, 2005 Del. LEXIS 152 (Del. Apr. 12, 2005)(ORDER);

22. DAMAGES

PUNITIVE DAMAGES MAY BE RECOVERED

AGAINST ESTATE OF TORTFEASOR

[**Comment**: *Delaware law permits the recovery of punitive damages from the estate of the tortfeasor*.]

Source:

DEL. CODE ANN. tit. 10, § 3701; *Estate of Farrell v. Gordon*, 770 A.2d 517, 521-22 (Del. 2001); *but see* RESTATEMENT (SECOND) OF TORTS § 908, cmts. a & b (1965).

23. EVIDENCE AND GUIDES FOR ITS CONSIDERATIONS

CREDIBILITY OF WITNESSES - WEIGHING CONFLICTING TESTIMONY

You are the sole judges of each witness's credibility. That includes the parties. You should consider each witness's means of knowledge; strength of memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witnesses' biases, prejudices, or interests; the witnesses' manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.

If you find the testimony to be contradictory, you may try to reconcile it, if reasonably possible, so as to make one harmonious story of it all. But if you can't do this, then it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable.

Source:

See 3 DEVITT & BLACKMAR, FEDERAL JURY PRACTICE AND INSTRUCTIONS § 73.01 (4th ed. 1987); 75A AM. JUR. 2d §§ 747, 749, 750.

24. CONCLUDING INSTRUCTIONS

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

I have read a number of instructions to you. The fact that some particular point may be covered in the instructions more than some other point should not be regarded as meaning that I intended to emphasize that point. You should consider all the instructions.

Source:

DEL. CONST. art. IV, § 19; *Culver v. Bennett*, 588 A.2d 1094, 1096 (Del. 1991)(instructions to be considered as a whole); *Sirmans v. Penn*, 588 A.2d 1103, 1104 (Del. 1991)(instructions are not in error if they correctly state the law, are reasonably informative and not misleading judged by common practices and standards of verbal communication); *Dawson v. State*, 581 A.2d 1078, 1105 (Del. 1990)(jury instructions do not need to be perfect); *Probst v. State*, 547 A.2d 114, 119 (Del. 1988)(entire charge must be considered as a whole); *Haas v. United Technologies Corp.*, 1173, 1179 (Del. 1982), *appeal dismissed*, 459 U.S. 1192, 103 S. Ct. 1170, 75 L.Ed.2d 423 (1983); *State Hwy. Dep't v. Bazzuto*, 264 A.2d 347, 351 (Del. 1970); *Cloud v. State*, 154 A.2d 680 (Del. 1959); *Philadelphia B. & W. R.R. Co. v. Gatta*, 85 A. 721, 729 (Del. 1913)(jury is sole judge of facts).

24. CONCLUDING INSTRUCTIONS

COURT IMPARTIALITY

Nothing I have said since the trial began should be taken as an opinion about the outcome of the case. You should understand that no favoritism or partisan meaning was intended in any ruling I made during the trial or by these instructions. Further, you must not view these instructions as an opinion about the facts. You are the judges of the facts, not me.

Source:

DEL. CONST. art. IV, § 19; *Lagola v. Thomas*, 867 A.2d 891, 898 (Del. 2005)(self-restraint in questioning of any witness); *Price v. Blood Bank of Delaware, Inc.*, 790 A.2d 1203, 1210-12 (Del. 2002)(heightened requirement of impartiality when questioning witness); *Culver v. Bennett*, 588 A.2d 1094, 1096 (Del. 1991)(instructions to be considered as a whole); *Probst v. State*, 547 A.2d 114, 119 (Del. 1988); *Haas v. United Technologies Corp.*, 1173, 1179 (Del. 1982), *appeal dismissed*, 459 U.S. 1192, 103 S. Ct. 1170, 75 L.Ed.2d 423 (1983); *State Hwy. Dep't v. Bazzuto*, 264 A.2d 347, 351 (Del. 1970); *Cloud v. State*, 154 A.2d 680 (Del. 1959); *Philadelphia B. & W. R.R. Co. v. Gatta*, 85 A. 721, 729 (Del. 1913)(jury is sole judge of facts).